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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

I-2-0162.1US

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on June 26, 2006

Signature Thomas A. MattioliTyped or printed Thomas A. Mattioli
name

Application Number

09/845,803

Filed

April 30, 2001

First Named Inventor

Zeira et al.

Art Unit

2664

Examiner

Raj K. Jain

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.
 assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
 attorney or agent of record. 56,773
Registration number _____
 attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Thomas A. Mattioli

Signature

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215-568-6400

Telephone number

June 26, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the **PATENT APPLICATION** of:

Zeira et al.

Application No.: 09/845,803

Confirmation No.: 3229

Filed: April 30, 2001

For: DOWNLINK POWER CONTROL FOR
MULTIPLE DOWNLINK TIME SLOTS IN
TDD COMMUNICATION SYSTEMS

Group: 2664

Examiner: Raj K. Jain

Our File: I-2-0162.1US

Date: June 26, 2006

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Communication is being filed in response to the Final Office Action dated January 24, 2006 and is submitted in conjunction with an appropriate petition for extension of time.

A Pre-Appeal Brief Review is hereby requested in the above application for the following reasons:

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In the Office Action, claims 22 – 39 were finally rejected under 35 U.S.C. §103(a) as being unpatentable over U. S. Patent Publication No. 2002/0016177 (Miya et al.) in view of U. S. Reference No. 6,035,210 (Endo et al.).

In order to establish a *prima facie* case of obviousness, the Examiner must demonstrate there is a suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. Furthermore, the prior art references must teach or suggest all of the claim features. The Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of the Applicant's disclosure, attempt to reconstruct the invention.

Orthopedic Equipment Inc. v. U.S., 217 U.S.P.Q. 193, 199 (Fed. Cir. 1983).

Figures 2 and 5 of Miya as cited by the Examiner, and their corresponding description, refer to setting the transmission power level of the mobile station and not either the downlink power level or the transmit power level of a base station. Miya discloses exclusively the uplink transmit power of the mobile station. Miya illustrates an individual setting of power level for each timeslot using transmit power commands (TPC) for that timeslot or using a single to interference ratio (SIR) measurement of that timeslot.

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The present claims send a power command for a CCTrCH which includes a **plurality** of time slots. Nowhere in the Miya reference is it disclosed, suggested, or taught to send a power command for a CCTrCH which includes a plurality of time slots. Indeed, Miya teaches away from the Applicants' claimed invention by dealing with this scenario by sending individual TPC for each timeslot. The present claims use a power command for the CCTrCH and an interference measurement for each timeslot. Nowhere in Miya is this arrangement disclosed, suggested, or taught.

Endo is relied upon by the Examiner as disclosing the transmission of interference measurements. However, since Miya uses individual timeslot TPC, it is completely ***non-obvious*** why a person of ordinary skill in the art would use an interference measurement in addition to the TPC. In fact, a person of ordinary skill in the art would not consider combining the Endo reference with the Miya reference. Additionally, the Endo reference fails to cure the previously stated deficiencies of the Miya reference.

Accordingly, applicants respectfully submit that the claims are allowable over the Miya and Endo references, whether taken alone, or in combination with one another.

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In view of the foregoing remarks, Applicants respectfully request a Pre-Appeal Brief Review and a notice to that effect is respectfully requested.

Respectfully submitted,

Zeira et al.

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